

IN THE SUPREME COURT OF ONTARIO
(DIVISIONAL COURT)
REID, CRAIG and MONTGOMERY JJ.

IN THE MATTER OF THE ONTARIO
HUMAN RIGHTS CODE, 1981, S.O.1981,
c.53 AS AMENDED)

AND IN THE MATTER OF the)
Complaint made by Mr. Brian B. Hope)
of Kingston , Ontario alleging)
discrimination in the right to contract)
by the Royal Insurance Company of)
Canada, 10 Wellington Street East,)
Toronto, Ontario)

AND IN THE MATTER OF the)
Complaint made by Mr. Michael G.)
Bates, of Islington, Ontario,)
alleging discrimination in the right to)
contract and in services, goods and)
facilities by the Zurich Insurance)
Company, 188 University Avenue,)
Toronto, Ontario)

B E T W E E N:)

ROYAL INSURANCE COMPANY OF)
CANADA)

Appellant)

- and -)

ONTARIO HUMAN RIGHTS)
COMMISSION, BRIAN B. HOPE and)
ZURICH INSURANCE COMPANY)

Respondents)

Mr. W.J. McNaughton and
Mr. R. E. Hawkins, for the Appellant

Ms. J. E. Minor, for the
Respondents

Heard: June 12, 1985

MONTGOMERY J.:

This is an appeal pursuant to s. 41 of the Ontario Human Rights Code, 1981,
S.O. 1981, c. 53, as amended (the "Code") from the decision of a Board of Inquiry
(the "Board") dated June 21, 1984. The appellant seeks an Order reversing the

decision of the Board and declaring that the Board is without jurisdiction to proceed with the matter.

The two main issues raised in this appeal are: 1) Is the Code retrospective in effect, so that the Board has the power to review the contents of an insurance contract which was entered into prior to the proclamation of the Code; and 2) Does the "family status" ground of discrimination in s. 3 of the Code include an allegation based on the age, sex and marital status of a particular child; or, can the definition of "family status" which is "the status of being in a parent and child relationship" be extended to include an allegation based on the age, sex and marital status of a particular child?

The Respondent, Mr. Brian B. Hope, had an automobile insurance contract with the Royal Insurance Company of Canada ("Royal"). Mr. Hope added his sixteen year old son as an occasional driver under the policy for an additional premium of \$86.00, effective April 19, 1982. On June 15, 1982, the Code was proclaimed.

On August 11, 1982, Mr. Hope filed a complaint under the Code wherein he alleged that Royal had violated s. 3 and s. 8 by denying him "the right to contract on equal terms without discrimination because of the sex and marital status of my son and because of our family status".

Sections 3 and 8 of the Code provide as follows:

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

8. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

Professor Frederick H. Zemans was appointed under the Code to serve as the Board to hear and decide the complaint.

On May 22, 1984, Royal sought to have the complaint dismissed on jurisdictional grounds. The Board rejected that application.

At the same time the hearing of Mr. Hope's complaint was commenced, a hearing into a complaint by Mr. Michael G. Bates against the Zurich Insurance Company was also commenced. It was originally planned that the two hearings would proceed jointly as similar issues are involved. However, the hearing into Mr. Bates' complaint has proceeded on its merits with only final argument remaining to be made, while the hearing into Mr. Hope's complaint was adjourned pending the outcome of this appeal.

The question under the first issue is whether the Code should be applied so as to attach new consequences to an event that occurred prior to its enactment, namely, the entering into of an automobile insurance contract. To apply the Code as such would be to give it retrospective effect. There is a presumption against construing a statute so that it operates retrospectively. The classic statement of the presumption was made by Willis J. in Phillips v. Eyre, (1870), L.R. 6 Q.B. 1 at p. 23. It reads as follows:

Retrospective laws are, no doubt, prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, where introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the existing law ...

Accordingly, the Court will not ascribe retrospective force to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature.

There is nothing in the Code to indicate such an intention.

In Driedger, Construction of Statutes, (2d), 1983, at p. 198, the author points out that the presumption applies to statutes that:

create a new obligation, or impose a new duty or attach a new disability in respect of consideration already passed.

The Code imposes new duties and attaches new disabilities and, as such, brings about the application of the presumption.

The courts have declined to interpret similar legislation as having retrospective effect. Mr. Justice Le Dain, speaking for the Federal Court of Appeal in Re Latif and Canadian Human Rights Commission (1980), 105 D.L.R. (3d) 609 stated at p. 622 that:

The fact that legislation serves a generally laudable or desirable purpose is not by itself sufficient to displace the rule against retrospective operation.

In my view, the Code cannot be applied retrospectively. The Board has no jurisdiction to inquire into this insurance contract.

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Although my finding on the first issue is sufficient to dispose of the matter, I will briefly consider the second. Mr. Hope alleges an infringement of his right to contract on equal terms without discrimination because of his "family status". "Family status" is defined as "the status of being in a parent and child relationship". The Board found that "family status" as a ground of discrimination extends to the age, sex and marital status of a particular child.

I am of the view that the complaint does not raise the family status ground of discrimination. It is not the parent and child relationship that causes the increase in premiums. Rather, it is the fact that the occasional driver is under twenty-five years of age. All parents are treated identically with respect to the rates of occasional drivers. It is the age, sex and marital status of the drivers that are treated differently. The complaint, as such, fails to allege a ground of discrimination within the meaning of s. 3 of the Code.

The appeal should therefore be allowed, the decision of the Board is quashed and the complaint is dismissed with costs.



Handwritten signature of M. J. Jones, followed by the printed name "R. E. Reid" and the handwritten word "salary".

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The text also mentions the need for regular audits and the role of internal controls in ensuring the reliability of the data.

2. The second part of the document focuses on the challenges faced by organizations in implementing effective risk management strategies. It highlights the complexity of identifying and assessing risks, particularly in a rapidly changing environment. The text suggests that organizations should adopt a proactive approach to risk management, involving all levels of the organization and utilizing a variety of tools and techniques to identify potential threats and opportunities.

3. The third part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The text also mentions the need for regular audits and the role of internal controls in ensuring the reliability of the data.

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JUDGMENT

MONTGOMERY J.